

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No. 1723 of 2017

Date of decision:- March 09, 2017

RAKESH KUMAR

....PETITIONER..

VERSUS

SHIV DAYAL AND OTHERS

....RESPONDENTS..

CORAM:- HON'BLE MR. JUSTICE JASPAL SINGH

Present:- Mr. Shiv Kumar, Advocate,
for the petitioner.

JASPAL SINGH, J.

By virtue of instant petition preferred under Article 227 of the Constitution of India, the petitioner has sought setting aside of order dated 28.02.2017 passed by Additional Civil Judge (Sr. Division), Hodal whereby application filed by the petitioner for appointment of Local Commissioner, has been dismissed.

2. It would be appropriate to mention here that the instant revision petition is not maintainable. By now, it is well settled proposition of law that against the order of refusing the appointment of local commissioner, no revision either under Section 115 CPC or under Article 227 of the Constitution of India is maintainable. To fortify this observation, we can have the reference of the judgments delivered in cases captioned as *“Harvinder Kaur and another vs. Godha Ram and another”* 1979 AIR (Punjab) 76, *“Pritam Singh and another vs. Sunder Lal and ors”* 1990(2) PLR 191 and *“Sham Lal vs. Sumitra Devi, 2016(3) PLR 324”*.

3. Even otherwise, a glance at the impugned order dated 28.02.2017 transpires that the main discord between the parties is with regard to the possession of Khasra Nos. 241 and 250. Both the parties have already led evidence in support of their respective pleadings and now, at the fag end, when the suit was listed for rebuttal, if any, as well as for arguments, an application for appointment of Local Commissioner was moved by the petitioner-plaintiff to ascertain the possession over the disputed property bearing Khasra Nos. 241 and 250. It is well settled proposition of law that no Local Commissioner can be appointed to assist a party to collect evidence in support of its case. The possession over the property in suit is to be proved by the party claiming it.

4. Thus, this Court is of the considered view that even on merits, the application for appointment of Local Commissioner has been rightly dismissed by the ld. trial court. The impugned order is absolutely inconsonance with the settled proposition of law and does not call for any interference by this Court.

5. Finding no infirmity and illegality in the impugned order and the instant petition being devoid of merits stands dismissed.

6. No order as to costs.

March 09, 2017
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No